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Application Serial No. 10/678,187

Reply to Office Action dated October 20, 2005

Amendments to the Drawings:

The attached replacement sheets of drawings include changes to Figure 11 to correct a minor typographical error wherein gate pusher member has been corrected to be properly identified by reference numeral 190.

Attachment: Replacement Sheets

REMARKS/ARGUMENTS

Initially, the Applicant would like to thank the Examiner and the Examiner's Supervisor for taking the time to discuss the outstanding Office Action issued in connection with the above-identified U.S. patent application with the Applicant's representative during the telephone interview conducted on January 11, 2006. In addition, the Applicant would like to thank the Examiner for the early indication of allowable subject matter. More specifically, on page 7 of the Office Action, the Examiner indicated that claims 3, 7-11, 13, 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

In addition, on page 8 of the Office Action, the Examiner indicated that claims 4, 12 and 15 would be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph. Towards that end, by the present amendment, Figure 11 has been amended to correct a typographical error such that gate pusher member is now properly identified by reference numeral 190. Regarding claims 2, 5, 15 and 19, the Examiner argued that it was unclear as to how the means for automatically shifting the gate assembly operated and that, as an initial manual input is required to enable the automatic shifting, the gate assembly does not "automatically" shift. The Applicant disagrees with this particular position. For example, an automatic transmission shifts between various gears but still requires the vehicle operator to put the transmission in drive. This initial manual input does not detract from the automatic nature of the transmission. However, in order to further prosecution, the term "automatically" as been deleted from the aforementioned claims to overcome the rejection as agreed during the interview. Finally, with respect to claim 12, the Examiner indicated that it was unclear what is meant by the term "majority." In discussing this claim with the Examiner and the Examiner's Supervisor, it became clear that the term "recess" was more troublesome. Accordingly, the word "recess" has been replaced with the word "position" such that claim 12 now reads "...the U-shaped bend portions position a majority of each of the retainer elements..." This language was indicated to be acceptable by the Examiner.

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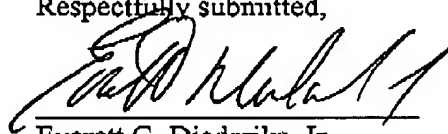
On page 4 of the Office Action, the Examiner outlined a rejection to claims 1, 2, 5, 6, 14, 18 and 19 under 35 U.S.C. § 102(b) as being anticipated by Wittern, Jr. et al. (U.S. Patent No. 6,302,293). Wittern, Jr. et al. discloses a vending machine having a plurality of front retainer members 28 that are pivoted individually to provide access to corresponding one of a plurality of columns C1 – C7. The Examiner's position is that, given the front retainer members 28 are pivotally mounted to the frame, shifting the individual front retainer elements 28 between open and closed positions causes retainer members 28 to travel along an arcuate path. The Applicant respectfully submits that the plurality of front retainer elements 28 are not analogous to a front gate assembly as outlined in claims 1 and 14. However, in order to further prosecution, claims 1 and 14 have been amended to more particularly point out and distinctly claim the invention. That is, claims 1 and 14 were amended to recite that the plurality of retainer elements are interconnected to each other such that the retainer elements travel in unison along an arcuate path from a first, product retaining position to a second, product loading position. The Applicant respectfully submits that these amendments further distinguish the present invention from the prior art such that claims 1 and 14, as amended, should now be in clear condition for allowance. During the interview, the Examiners indicated that these claim changes would be favorably viewed.

It is also respectfully submitted that the remaining claims serve to further distinguish the present invention from the prior art. For example, claim 5 requires that the front gate assembly include means for positioning a product container in the stack area. The Applicant respectfully submits that the prior art reference to Wittern, Jr. et al. does not position product containers in the stack area but merely closes off a front portion of a stack. Moreover, given that claim 5 is presented in means-plus-function format, the prior art must perform the identical function. See M.P.E.P. 2100-236, column 1, lines 14-18. This is simply not the case with respect to the Wittern, Jr., et al. reference. Likewise, claim 6 requires that the position means be constituted by portions of the plurality of retainer elements that travel along the arcuate path. No such corresponding structure is found in the Wittern, Jr. et al. reference.

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Based on the above remarks, as well as the amendments to the claims and drawings, the Applicant respectfully submits that the present application is patentably defined over the prior art of record such that allowance of all the claims and passage of the application to issue are respectfully requested. If the Examiner should have any additional questions or concerns, he is cordially invited to contact the undersigned at the number provided below if it would further prosecution of this case.

Respectfully submitted,



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Date: January 19, 2006
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